

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 30th day of August, two thousand and six.

PRESENT:

HON. GUIDO CALABRESI,  
HON. SONIA SOTOMAYOR,  
HON. RICHARD C. WESLEY,  
*Circuit Judges.*

Xiu Lu Ye,

\_\_\_\_\_*Petitioner,*

-v.-

Alberto R. Gonzales,

\_\_\_\_\_*Respondent.*

No. 06-1129-ag  
NAC  
A76-027-744

FOR PETITIONER: Michael Brown, New York, New York.

FOR RESPONDENT: David E. Nahmias, United States Attorney for the Northern District of Georgia, J. Elizabeth McBath, Assistant United States Attorney, Atlanta, Georgia.

UPON DUE CONSIDERATION of this petition for review of a decision of the Board of Immigration Appeals (“BIA”), it is hereby ORDERED, ADJUDGED, AND DECREED, that this

1 petition for review is GRANTED, the BIA’s order is VACATED, and the case is REMANDED  
2 to the BIA for further proceedings in accordance with this decision.

3 Xiu Lu Ye, a native and citizen of the People's Republic of China (“China”), seeks review  
4 of a February 16, 2006 order of the Board of Immigration Appeals (“BIA”) denying Ye's second  
5 motion to reopen. *In re Ye, Xiu Lu*, No. A76-027-744 (B.I.A. Feb 16, 2006). We assume the  
6 parties’ familiarity with the underlying facts and procedural history of the case.

7 This Court reviews the BIA’s denial of a motion to reopen or reconsider for abuse of  
8 discretion. *See Kaur v. BIA*, 413 F.3d 232, 233 (2d Cir. 2005) (per curiam); *Jin Ming Liu v.*  
9 *Gonzales*, 439 F.3d 109, 111 (2d Cir. 2006). An abuse of discretion may be found where the  
10 BIA’s decision “provides no rational explanation, inexplicably departs from established policies,  
11 is devoid of any reasoning, or contains only summary or conclusory statements; that is to say,  
12 where the Board has acted in an arbitrary or capricious manner.” *Kaur*, 413 F.3d at 233-34; *Ke*  
13 *Zhen Zhao v. U.S. Dep’t of Justice*, 265 F.3d 83, 93 (2d Cir. 2001) (internal citations omitted).

14 The BIA abused its discretion in denying Ye's second motion to reopen. Although the  
15 BIA reasonably found that Ye's motion was untimely under 8 C.F.R. 1003.2(c)(2), it is not clear  
16 whether the BIA considered Ye's claim that after the denial of her first motion to reopen, the  
17 Chinese authorities discovered that she had three children and, consequently, issued an official  
18 notice requiring her to undergo sterilization for “overbirth.” In its decision, the BIA determined  
19 that Ye's claim that “circumstances ha[d] changed in her native China, as the government is  
20 aware of her children,” did not establish sufficient grounds for reopening her proceedings. In  
21 reaching this determination, the BIA noted that it had already “considered that [Ye] was pregnant  
22 with her third child” when it denied Ye's first motion to reopen. However, Ye's claim of changed

1 circumstances in China in her second motion to reopen was based not only on having three  
2 children but also on her assertion that family planning officials issued a sterilization notification  
3 that required her to report for sterilization because of her “overbirth” violation of family planning  
4 policies. In support of this assertion, Ye submitted a letter from her mother and the alleged  
5 sterilization notification, both of which are dated after the BIA's denial of Ye's first motion to  
6 reopen. Because the BIA did not indicate whether it took this evidence into account and it failed  
7 to discuss whether the alleged issuance by the government of the sterilization notification  
8 constituted “changed circumstances arising” in China under 8 C.F.R. § 1003.2(c)(3)(ii), we  
9 remand for further consideration.

10 For the foregoing reasons, we GRANT this petition, VACATE the BIA’s decision, and  
11 REMAND to the BIA for further proceedings consistent with this decision. The pending motion  
12 for a stay of removal in this petition is DENIED and the pending request for oral argument in this  
13 petition are DENIED as moot.

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16 FOR THE COURT:  
17 Roseann B. MacKechnie, Clerk  
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By:\_\_\_\_\_